AMERICANS FOR FINANCIAL REFORM
ACCOUNTABILITY ★ FAIRNESS ★ SECURITY

Americans for Financial Reform
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VIA http://www.regulations.gov

Monica Jackson
Office of the Executive Secretary
Bureau of Consumer Financial Protection
1700 G Street NW
Washington, DC 20552

Re: High-Cost Mortgage and Homeownership Counseling Amendments to TILA and Homeownership Counseling Amendments to RESPA, 77 Fed. Reg. 49,090 (August 15, 2012), Docket No. CFPB-2012-0029

Dear Ms. Jackson:

On behalf of Americans for Financial Reform we thank you for the opportunity to comment on proposed regulations under TILA and RESPA regarding high-cost mortgage protections and housing counseling. We commend the Bureau for its work in implementing the Dodd-Frank changes to HOEPA. There is much to applaud in the Bureau's work. What follows are a few key comments on the implementation of those changes.

Mortgage Loans Made Primarily To Low-Income Consumers Should Not Receive Fewer Protections

The Bureau should collect data on whether there is a legitimate need to vary the HOEPA triggers by loan size or collateral type before implementing any variations in triggers for high cost loans. Absent a compelling need, we are concerned that these variations are likely to harm the poorest and most vulnerable. Dodd-Frank permits the Bureau to have different triggers for two categories of lending: loans with a dollar amount of less than $50,000 secured by personal property, 15 U.S.C. § 1602(bb)(1)(A)(i)(I), and loans of less than $20,000, 15 U.S.C. § 1602(bb)(1)(A)(ii)(II).

In particular, we are concerned that having higher triggers for these two categories of loans would expose rural communities, often heavily dependent on manufactured housing for shelter, and communities of color, where low dollar value loans are more often needed, to predation. It also would add incentives for lenders and manufactured home retailers to steer buyers into classifying their home as personal property.

HELOCs Should Garner the Same Protections as Closed-End Mortgages

Although Congress clearly intended to include open-end mortgages in the high-cost mortgage protections, the Bureau proposes to establish lesser protections for these loans. HELOCs should have triggers and protections equal to those applicable to closed-end mortgages. In particular, all loan originator compensation should be included in the points and fees for open-end credit, and all prepayment penalties, including waived fees that are only waived so long as a borrower does not refinance to more fairly priced credit, should be counted towards the trigger for open-end credit.

Many consumers and creditors do not distinguish between open and closed-end home-secured credit. A consumer's focus is primarily on the fact that the loan secures the home. Second liens often are open-end; this fact should not result in less protection. The consequences of default on a HELOC are far more serious than for credit cards and more closely resemble the effects of default in a closed-end mortgage.

A Creditor Should Be Limited to Correcting Errors Before Litigation or Rescission

Dodd-Frank sets out rules for when creditors can correct errors made under the high-cost mortgage rules, without facing liability. The statute prohibits corrections of errors after institution of any action and limits correction to good faith. The Bureau should clarify that creditors can only correct errors before the consumer notifies the creditor of the error. Absent clarification, there is likely to be much litigation as to what constitutes a good faith error and what notice to a creditor triggers the time period for the creditor to correct the error without facing liability.

If the consumer notifies the creditor of the error, it will most likely be in the context of invoking her right to cancel the transaction. A consumer's right to cancel a transaction is the most important protection the Truth in Lending Act offers. If a homeowner is trapped in an unaffordable loan, rescission based on Truth in Lending Act violations is often the only way to save that homeowner from foreclosure. High-cost credit poses an especially high risk to homeowners. The Dodd-Frank language is consistent with preserving an aggrieved homeowner's right to cancel. But courts and creditors may interpret it as allowing a creditor to cut-off a consumer's right to cancel or respond to a cancellation notice by making a correction. The potential corrections are unlikely to ameliorate the damage caused by predatory lending. By the time a borrower rescinds, arrears are already high, with damage to the consumer's credit, significant accrued late fees, and foreclosure on the horizon (or closer).

Fundamentally, if creditors can correct errors after consumers notify them of the error, incentives for creditors to comply with the law are greatly reduced. Corrections of errors should be allowable only before the consumer provides the creditor with notice of the error. Additionally, there should be a presumption that systemic errors are not good faith errors. Systemic errors are unlikely to arise in the presence of adequate safeguards and procedures to minimize errors.

Lenders and Brokers Should Not Be Protected When They Recommend a Homeowner Stop Making Mortgage Payments

Dodd-Frank bans lenders from encouraging consumers to default on existing debt in connection with a transaction that would refinance that debt. We support the Bureau's expansion of this rule to brokers, who have similar incentives to engage in this conduct. However, we urge the Bureau to omit the proposed commentary allowing creditors and brokers to advise a consumer to stop making payments on an existing loan. This exception would swallow the rule and would allow creditors and brokers to put homeowners in jeopardy of default.

Homeowners Obtaining Modifications and Deferrals Should Not Be Subject to Fees

We support the Bureau's proposal banning fees to modify, defer payments due, renew, extend or amend high-cost mortgages. The rule should clarify that forbearances are covered. This ban is important because such fees can pose a barrier to loss mitigation options that would ultimately benefit the consumer and the mortgage holder. These fees can still act as a barrier even if capitalized because they affect measurements of affordability. They can also affect whether a modification is NPV positive. Even if the consumer can pay the upfront fee, that payment can doom a modification to failure because it overstretches the borrower's resources, leaving the borrower unable to make the regular monthly payments or cover unanticipated emergencies. This rule also should cover the practice of requiring arrearage payments, a form of a fee, prior to providing modifications and deferrals.

Negative Amortization Loans Pose Serious Dangers to Consumers

Dodd-Frank requires counseling for first-time homeowners receiving loans with negative amortization. Negative amortization poses dangers to consumers, and as vital steps to address this the housing counseling requirement should be extended to all homeowners – not just first time homeowners – and it should spell out clear minimum standards to ensure that counseling provides a fact based and meaningful recommendation on the advisability of the loan for the applicant on the basis of affordability and appropriateness. Many of the worst incidents of predatory lending involved homeowners who were refinancing their mortgages; the potential for abuse is by no means limited to first time home buyers. Congress created the counseling requirement to protect borrowers from abusive negative amortization loans, and the Bureau must design the counseling requirement so that it provides applicants with the information and advice they need to assess the loan they are offered.

Housing Counseling Information Should Be Broadly Available

Housing counseling lists should be given to homebuyers, HOEPA loan applicants, and negative amortization loan applicants, and should be made up of HUD-approved housing counseling agencies, not lists of individual housing counselors. Listing individual counselors instead of their agencies will lead to overwhelmed counselors, log jams, frustrated consumers, organizational inefficiencies and administrative burdens for lenders and the CFPB. The Bureau should make the portal for housing counseling contact information available to the public and publicize it widely. The selection should sort by language capacity and accessibility for people with disabilities. The Bureau should also sort counseling agencies by counseling capacities, so that agencies with capacity in pre-purchase, refinance, home equity lending, credit counseling, rental, homeless, reverse mortgage, landlord/tenant, and delinquency and default counseling can be identified.

The Current Definition of the Total Loan Amount Should Be Maintained

The Bureau proposes to revise the total loan amount definition so that the calculation is made by deducting only financed points and fees from the total principal balance, and not from the amount financed. This change would allow creditors to include in the total loan amount prepaid finance charges, so long as they were paid in cash, and would encourage creditors and loan originators to evade the HOEPA protections. Creditors and brokers have in the past often provided personal loans to cover closing costs; this seemingly small and technical change would accelerate that dangerous trend.

The CFPB Must Prevent Attempts To Evade HOEPA Requirements While Charging Effective Fees and Points or Interest Rates Above the HOEPA Triggers.

For the Bureau to protect consumers from high-cost mortgage abuses, a key action it must take is to prevent the many subterfuges that unscrupulous lenders use to attempt to engage in high-cost lending without complying with the HOEPA standards. There is a long history of lenders' gaming the HOEPA thresholds to make the points and fees and/or interest rates charged appear to be below the high-cost rate trigger, when in fact the actual charges exceed the triggers - often by a substantial amount. These evasions take a variety of forms such as charging points in fees in a related loan in an attempt to avoid the points and fees trigger, and using a variety of schemes to manipulate the stated APR to appear far less than the actual APR. For example, lenders use high default interest rates on loans where these rates will be incurred by most borrowers. Low and moderate income borrowers often have few financial reserves. So, when they incur an emergency expense, such as a large car repair bill or a medical bill, they may fall behind for a month in their mortgage payment. With default interest rates, this becomes a debt death spiral that strips away their home equity. Default interest rates of 18% are not uncommon.

This means that consumers not only have to catch up their one missed payment, but also they are now accumulating huge amounts of additional interest. Since the default interest rate typically continues until all loan charges, including this additional interest, are fully caught up, most borrowers never catch up- and that is precisely what the lenders intend. These loans are typically made to borrowers who have substantial home equity but who also have substantial cash flow problems. The lenders know from the borrowers' prior experience that they are likely to encounter periods where they fall behind. Indeed, the business model for these loans is premised on that occurring. Other manipulations of the APR are tricks like having a very high interest rate for the early years of the loan and a lower rate for the distance years. The lender can usually trigger a refinancing long before the lower rate years are ever reached, but the blending of the APR permits the lender to claim that the loan is not a high-cost loan, even though the borrower pays and the lender receives interest above the HOEPA trigger for the expected and actual life of the loan. A similar result obtains with interest rate discount programs, where the lender calculates the APR based on an interest rate that is received only if the borrower has a perfect payment record. The lender markets the loans to customers for whom this is highly unlikely, again collecting interest that is far above the HOEPA trigger. To prevent these evasions and abuses it is essential that the Bureau use the highest possible interest rate that can be charged over the loan in the first seven years of the loan for calculating whether or not a loan exceeds the HOEPA interest rate trigger.

Thank you again for the opportunity to submit comments.

Sincerely,

Americans for Financial Reform

Following are the partners of Americans for Financial Reform.

All the organizations support the overall principles of AFR and are working for an accountable, fair and secure financial system. Not all of these organizations work on all of the issues covered by the coalition or have signed on to every statement.

- A New Way Forward
- AFL-CIO
- AFSCME
- Alliance For Justice
- American Income Life Insurance
- American Sustainable Business Council
- Americans for Democratic Action, Inc
- Americans United for Change
- Campaign for America’s Future
- Campaign Money
- Center for Digital Democracy
- Center for Economic and Policy Research
- Center for Economic Progress
- Center for Media and Democracy
- Center for Responsible Lending
- Center for Justice and Democracy
- Center of Concern
- Change to Win
- Clean Yield Asset Management
- Coastal Enterprises Inc.
- Color of Change
- Common Cause
- Communications Workers of America
- Community Development Transportation Lending Services
- Consumer Action
- Consumer Association Council
- Consumers for Auto Safety and Reliability
- Consumer Federation of America
- Consumer Watchdog
- Consumers Union
- Corporation for Enterprise Development
- CREDO Mobile
- CTW Investment Group
- Demos
- Economic Policy Institute
- Essential Action
- Greenlining Institute
- Good Business International
- HNMA Funding Company

- Home Actions
- Home Defenders League
- Housing Counseling Services
- Information Press
- Institute for Global Communications
- Institute for Policy Studies: Global Economy Project
- International Brotherhood of Teamsters
- Institute of Women’s Policy Research
- Krull & Company
- Laborers’ International Union of North America
- Lake Research Partners
- Lawyers' Committee for Civil Rights Under Law
- Move On
- NAACP
- NASCAT
- National Association of Consumer Advocates
- National Association of Neighborhoods
- National Community Reinvestment Coalition
- National Consumer Law Center (on behalf of its low-income clients)
- National Consumers League
- National Council of La Raza
- National Fair Housing Alliance
- National Federation of Community Development Credit Unions
- National Housing Resource Center
- National Housing Trust
- National Housing Trust Community Development Fund
- National NeighborWorks Association
- National Nurses United
- National People’s Action
- National Council of Women’s Organizations
- Next Step
- OMB Watch
- OpenTheGovernment.org
- Opportunity Finance Network
- Partners for the Common Good
- PICO National Network
- Progress Now Action
- Progressive States Network
- Poverty and Race Research Action Council
- Public Citizen
- Sargent Shriver Center on Poverty Law
- SEIU
- State Voices
- Taxpayer’s for Common Sense
- The Association for Housing and Neighborhood Development
- The Fuel Savers Club
- The Leadership Conference on Civil and Human Rights
- The Seminal

- TICAS
- U.S. Public Interest Research Group
- UNITE HERE
- United Food and Commercial Workers
- United States Student Association
- USAction
- Veris Wealth Partners
- Western States Center
- We the People Now
- Woodstock Institute
- World Privacy Forum
- UNET
- Union Plus
- Unitarian Universalist for a Just Economic Community

List of State and Local Signers

- Alaska PIRG
- Arizona PIRG
- Arizona Advocacy Network
- Arizonans For Responsible Lending
- Association for Neighborhood and Housing Development NY
- Audubon Partnership for Economic Development LDC, New York NY
- BAC Funding Consortium Inc., Miami FL
- Beech Capital Venture Corporation, Philadelphia PA
- California PIRG
- California Reinvestment Coalition
- Century Housing Corporation, Culver City CA
- CHANGER NY
- Chautauqua Home Rehabilitation and Improvement Corporation (NY)
- Chicago Community Loan Fund, Chicago IL
- Chicago Community Ventures, Chicago IL
- Chicago Consumer Coalition
- Citizen Potawatomi CDC, Shawnee OK
- Colorado PIRG
- Coalition on Homeless Housing in Ohio
- Community Capital Fund, Bridgeport CT
- Community Capital of Maryland, Baltimore MD
- Community Development Financial Institution of the Tohono O'odham Nation, Sells AZ
- Community Redevelopment Loan and Investment Fund, Atlanta GA
- Community Reinvestment Association of North Carolina
- Community Resource Group, Fayetteville A
- Connecticut PIRG

- Consumer Assistance Council
- Cooper Square Committee (NYC)
- Cooperative Fund of New England, Wilmington NC
- Corporacion de Desarrollo Economico de Ceiba, Ceiba PR
- Delta Foundation, Inc., Greenville MS
- Economic Opportunity Fund (EOF), Philadelphia PA
- Empire Justice Center NY
- Empowering and Strengthening Ohio's People (ESOP), Cleveland OH
- Enterprises, Inc., Berea KY
- Fair Housing Contact Service OH
- Federation of Appalachian Housing
- Fitness and Praise Youth Development, Inc., Baton Rouge LA
- Florida Consumer Action Network
- Florida PIRG
- Funding Partners for Housing Solutions, Ft. Collins CO
- Georgia PIRG
- Grow Iowa Foundation, Greenfield IA
- Homewise, Inc., Santa Fe NM
- Idaho Nevada CDFI, Pocatello ID
- Idaho Chapter, National Association of Social Workers
- Illinois PIRG
- Impact Capital, Seattle WA
- Indiana PIRG
- Iowa PIRG
- Iowa Citizens for Community Improvement
- JobStart Chautauqua, Inc., Mayville NY
- La Casa Federal Credit Union, Newark NJ
- Low Income Investment Fund, San Francisco CA
- Long Island Housing Services NY
- MaineStream Finance, Bangor ME
- Maryland PIRG
- Massachusetts Consumers' Coalition
- MASSPIRG
- Massachusetts Fair Housing Center
- Michigan PIRG
- Midland Community Development Corporation, Midland TX
- Midwest Minnesota Community Development Corporation, Detroit Lakes MN
- Mile High Community Loan Fund, Denver CO
- Missouri PIRG
- Mortgage Recovery Service Center of L.A.
- Montana Community Development Corporation, Missoula MT
- Montana PIRG
- Neighborhood Economic Development Advocacy Project
- New Hampshire PIRG
- New Jersey Community Capital, Trenton NJ
- New Jersey Citizen Action
- New Jersey PIRG
- New Mexico PIRG

- New York PIRG
- New York City Aids Housing Network
- New Yorkers for Responsible Lending
- NOAH Community Development Fund, Inc., Boston MA
- Nonprofit Finance Fund, New York NY
- Nonprofits Assistance Fund, Minneapolis M
- North Carolina PIRG
- Northside Community Development Fund, Pittsburgh PA
- Ohio Capital Corporation for Housing, Columbus OH
- Ohio PIRG
- OligarchyUSA
- Oregon State PIRG
- Our Oregon
- PennPIRG
- Piedmont Housing Alliance, Charlottesville VA
- Michigan PIRG
- Rocky Mountain Peace and Justice Center, CO
- Rhode Island PIRG
- Rural Community Assistance Corporation, West Sacramento CA
- Rural Organizing Project OR
- San Francisco Municipal Transportation Authority
- Seattle Economic Development Fund
- Community Capital Development
- TexPIRG
- The Fair Housing Council of Central New York
- The Loan Fund, Albuquerque NM
- Third Reconstruction Institute NC
- Vermont PIRG
- Village Capital Corporation, Cleveland OH
- Virginia Citizens Consumer Council
- Virginia Poverty Law Center
- War on Poverty - Florida
- WashPIRG
- Westchester Residential Opportunities Inc.
- Wigamig Owners Loan Fund, Inc., Lac du Flambeau WI
- WISPIRG

Small Businesses

- Blu
- Bowden-Gill Environmental
- Community MedPAC
- Diversified Environmental Planning
- Hayden & Craig, PLLC
- Mid City Animal Hospital, Pheonix AZ
- The Holographic Repatterning Institute at Austin

- UNET